

District Commander may, as a matter of discretion, allow oral presentation on the issues.

(c) Any person directly affected by the establishment of a safety zone or by an order or direction issued by, or on behalf of, a District Commander, or who receives an unfavorable ruling on an appeal taken under paragraph (b) of this section may appeal to the Area Commander through the District Commander. The appeal must be in writing, except as allowed under paragraph (e) of this section, and shall contain complete supporting documentation and evidence which the appellant wishes to have considered. Upon receipt of the appeal, the Area Commander may direct a representative to gather and submit documentation or other evidence which would be necessary or helpful to a resolution of the appeal. A copy of this documentation and evidence is made available to the appellant. The appellant is afforded five working days from the date of receipt to submit rebuttal materials. Following submission of all materials, the Area Commander issues a ruling, in writing, on the appeal. Prior to issuing the ruling, the Area Commander may, as a matter of discretion, allow oral presentation on the issues.

(d) Any person who receives an unfavorable ruling on an appeal taken under paragraph (c) of this section, may appeal through the Area Commander to the Assistant Commandant for Prevention (formerly known as the Assistant Commandant for Marine Safety, Security and Environmental Protection), U.S. Coast Guard, Washington, DC 20593. The appeal must be in writing, except as allowed under paragraph (e) of this section. The Area Commander forwards the appeal, all the documents and evidence which formed the record upon which the order or direction was issued or the ruling under paragraph (c) of this section was made, and any comments which might be relevant, to the Assistant Commandant for Prevention. A copy of this documentation and evidence is made available to the appellant. The appellant is afforded five working days from the date of receipt to submit rebuttal materials to the Assistant Commandant for Prevention. The decision

of the Assistant Commandant for Prevention is based upon the materials submitted, without oral argument or presentation. The decision of the Assistant Commandant for Prevention is issued in writing and constitutes final agency action.

(e) If the delay in presenting a written appeal would have significant adverse impact on the appellant, the appeal under paragraphs (b) and (c) of this section may initially be presented orally. If an initial presentation of the appeal is made orally, the appellant must submit the appeal in writing within five days of the oral presentation to the Coast Guard official to whom the presentation was made. The written appeal must contain, at a minimum, the basis for the appeal and a summary of the material presented orally. If requested, the official to whom the appeal is directed may stay the effect of the action while the ruling is being appealed.

[CGD 79-026, 48 FR 35404, Aug. 4, 1983, as amended by CGD 88-052, 53 FR 25122, July 1, 1988; CGD 96-026, 61 FR 33668, June 28, 1996; CGD 97-023, 62 FR 33364, June 19, 1997; USCG-2002-12471, 67 FR 41333, June 18, 2002; USCG-2006-25150, 71 FR 39211, July 12, 2006; 72 FR 17409, Apr. 9, 2007]

## **Subpart B—Control of Vessel and Facility Operations**

### **§ 160.101 Purpose.**

This subpart describes the authority exercised by District Commanders and Captains of the Ports to insure the safety of vessels and waterfront facilities, and the protection of the navigable waters and the resources therein. The controls described in this subpart are directed to specific situations and hazards.

### **§ 160.103 Applicability.**

(a) This subpart applies to any—

(1) Vessel on the navigable waters of the United States, except as provided in paragraphs (b) and (c) of this section;

(2) Bridge or other structure on or in the navigable waters of the United States; and

(3) Land structure or shore area immediately adjacent to the navigable waters of the United States.



## § 160.105

(b) This subpart does not apply to any vessel on the Saint Lawrence Seaway.

(c) Except pursuant to international treaty, convention, or agreement, to which the United States is a party, this subpart does not apply to any foreign vessel that is not destined for, or departing from, a port or place subject to the jurisdiction of the United States and that is in:

(1) Innocent passage through the territorial sea of the United States;

(2) Transit through the navigable waters of the United States which form a part of an international strait.

### § 160.105 Compliance with orders.

Each person who has notice of the terms of an order issued under this subpart must comply with that order.

### § 160.107 Denial of entry.

Each District Commander or Captain of the Port, subject to recognized principles of international law, may deny entry into the navigable waters of the United States or to any port or place under the jurisdiction of the United States, and within the district or zone of that District Commander or Captain of the Port, to any vessel not in compliance with the provisions of the Port and Tanker Safety Act (33 U.S.C. 1221–1232) or the regulations issued thereunder.

### § 160.109 Waterfront facility safety.

(a) To prevent damage to, or the destruction of, any bridge or other structure on or in the navigable waters of the United States, or any land structure or shore area immediately adjacent to such waters, and to protect the navigable waters and the resources therein from harm resulting from vessel or structure damage, destruction, or loss, each District Commander or Captain of the Port may:

(1) Direct the handling, loading, unloading, storage, and movement (including the emergency removal, control and disposition) of explosives or other dangerous articles and substances, including oil or hazardous material as those terms are defined in 46 U.S.C. 2101 on any structure on or in the navigable waters of the United States, or any land structure or shore

## 33 CFR Ch. I (7–1–08 Edition)

area immediately adjacent to those waters; and

(2) Conduct examinations to assure compliance with the safety equipment requirements for structures.

[CGD 79–026, 48 FR 35404, Aug. 4, 1983, as amended by USCG–1998–3799, 63 FR 35531, June 30, 1998]

### § 160.111 Special orders applying to vessel operations.

Each District Commander or Captain of the Port may order a vessel to operate or anchor in the manner directed when:

(a) The District Commander or Captain of the Port has reasonable cause to believe that the vessel is not in compliance with any regulation, law or treaty;

(b) The District Commander or Captain of the Port determines that the vessel does not satisfy the conditions for vessel operation and cargo transfers specified in § 160.113; or

(c) The District Commander or Captain of the Port has determined that such order is justified in the interest of safety by reason of weather, visibility, sea conditions, temporary port congestion, other temporary hazardous circumstances, or the condition of the vessel.

### § 160.113 Prohibition of vessel operation and cargo transfers.

(a) Each District Commander or Captain of the Port may prohibit any vessel, subject to the provisions of chapter 37 of Title 46, U.S. Code, from operating in the navigable waters of the United States, or from transferring cargo or residue in any port or place under the jurisdiction of the United States, and within the district or zone of that District Commander or Captain of the Port, if the District Commander or the Captain of the Port determines that the vessel's history of accidents, pollution incidents, or serious repair problems creates reason to believe that the vessel may be unsafe or pose a threat to the marine environment.

(b) The authority to issue orders prohibiting operation of the vessels or transfer of cargo or residue under paragraph (a) of this section also applies if the vessel: